

89-1622

No. \_\_\_\_\_

Supreme Court, U.S.

FILED

APR 17 1989

JOSEPH E. SPANIO, JR.  
CLERK

IN THE

# Supreme Court of the United States

October Term, 1989

ODEH JOSEPH SALEH,  
*Petitioner,*

vs.

UNITED STATES OF AMERICA,  
*Respondent.*

## PETITION FOR WRIT OF CERTIORARI To the United States Court of Appeals For the Sixth Circuit

KENT R. MINSHALL, JR  
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(216) 241-0505  
*Counsel for Petitioner*



i.

### QUESTIONS PRESENTED

1. Was it plain error for the trial court to a) refuse to instruct the jury on the elements of constructive possession of a firearm under 21 U.S.C. 922(g); b) fail to instruct the jury that the fact that a firearm was legally owned by another person and thus legally on the premises could be considered in determining constructive possession; and c) instruct the jury that possession of the firearm for "any length of time" was sufficient to convict without limiting this to the date charged in the indictment?

2. Is evidence of co-ownership by the petitioner of a grocery store in which a firearm is legally on the premises, being legally registered and owned by another co-owner of the store, and petitioner's mere presence in the store and proximity to the firearm sufficient to establish constructive possession of that firearm for purposes of conviction under 21 U.S.C. 922(g)?

3. Is evidence of a conspiracy to commit a crime also evidence of aiding and abetting a subsequent crime two weeks after abandonment of the original scheme?



iii.

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No. \_\_\_\_\_

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IN THE

**Supreme Court of the United States**

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October Term, 1989

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ODEH JOSEPH SALEH,  
*Petitioner,*

vs.

UNITED STATES OF AMERICA,  
*Respondent.*

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**PETITION FOR WRIT OF CERTIORARI  
To the United States Court of Appeals  
For the Sixth Circuit**

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The Petitioner, Odeh Joseph Saleh, respectfully prays that a Writ of Certiorari issue to review the Judgment on summary disposition of the Court of Appeals for the Sixth Circuit entered in this case on January 17, 1990.

## OPINIONS BELOW

The Judgment on summary disposition of the Court of Appeals for the Sixth Circuit appears in the Appendix, as does the Judgment of the United States District Court for Eastern District of Michigan, Southern Division.

## JURISDICTION

The Judgment of the Court of Appeals for the Sixth Circuit was entered on January 17, 1990. The Petitioner did not seek rehearing. This Petition for Writ of Certiorari has been filed within 90 days of the January 17, 1990 Judgment. This Court has jurisdiction to grant this Petition under 28 U.S.C. Sec. 1254(1).

## CONSTITUTIONAL PROVISION INVOLVED

The constitutional issue in this case arises under the Due Process Clause, Fifth Amendment, of the United States Constitution: "No person shall be . . . deprived of life, liberty, or property, without due process of law."

### STATEMENT OF THE CASE

Petitioner Odeh Joseph Saleh ("Joe") worked at a grocery store co-owned by himself, his brother Ahmed Joseph Saleh ("Tony"), and a third person named Robert Damon. The store was in a rough neighborhood of Southwest Detroit. Tony Saleh worked in the store during the week. Joe Saleh worked in the store on Fridays.

Tony Saleh legally owned a registered pistol which was sometimes kept at the store under the counter by the cash register.

On Friday, December 4, 1989, Joe Saleh was assisting a female customer with her purchase of groceries. Suddenly, federal agents burst into the store, seized Joe Saleh and put him on the floor, handcuffed him, searched the store pursuant to a warrant, and found a pistol registered to his brother Tony Saleh under the counter by the cash register. At no time on the date charged did Joe Saleh touch or even make a move toward the pistol, or in any other way attempt to control it.

During the search of the store, the federal agents found 50 grams of cocaine on top of a cooler in a public area of the store over fifteen feet away. Immediately prior to the raid on the store, federal agents had also arrested Tony Saleh and another individual, Joe Slate for attempting to sell 500 grams of cocaine at a location across town. No testimony or evidence was offered directly linking Petitioner to the attempted sale of the 500 grams.

The charges against Joe Saleh included "felon in possession of a firearm" under 21 U.S.C. 922(g), possession of 50 grams of cocaine on or about December

4, 1989, under 21 U.S.C. Section 841(a)(1), and aiding and abetting an attempted distribution of cocaine on or about December 4, 1989 under 21 U.S.C. 841(a)(1) and 846, and 21 U.S.C. Section 2.

The case was set for trial beginning January 3, 1989. The case was heard and the jury returned verdicts of guilty on all counts. Joe Saleh timely appealed to the Sixth Circuit Court of Appeals, alleging three assignments of error. The Court of Appeals affirmed the appeal on summary disposition on January 17, 1990. This Petition for Writ of Certiorari was timely filed on April 17, 1990.

## REASONS FOR GRANTING THE WRIT

### First Question Presented:

The plain error rule, Fed. R. Crim. P. 52(b), states that "plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." Defense counsel raised objections to the jury instructions on the charge of gun possession under 21 U.S.C. 922(g) at trial; however, these issues were not raised on direct appeal to the Court of Appeals. It is Petitioner's prayer to this honorable Court, however, that it exercise its power to notice plain error even where it has not been previously raised, *United Brotherhood, C.J. v. United States*, 330 U.S. 395, in order that the Court may rectify an instance of manifest injustice. The errors in the trial court's jury instructions on this charge affected a substantial right of the Petitioner; namely, the constitutional due process right to be convicted only upon proof beyond a reasonable doubt of each and every element of the charge. *Rose v. Clark*, 478 U.S. 570 (1986).

The jury instructions given by the trial court on the charge under 21 U.S.C. 922(g) were inherently prejudicial on several grounds. The trial court gave instructions regarding constructive possession on the counts of cocaine possession, both before and after giving the instructions on the firearm possession charge. Yet, the trial court denied defense counsel's request that the court instruct the jury on the elements that needed to be established for the jury to find that Petitioner had constructive possession of the firearm. Specifically, the court should have instructed the jury that "Constructive possession exists when a person does not have actual possession but instead knowingly has the power and the

intention at a given time to exercise dominion and control over an object, either directly or through others," *United States v. Beverly*, 750 F.2d 34, 37 (6th Cir. 1984).

Given the fact that there was no evidence whatsoever that Petitioner was ever in actual possession of the firearm "on or about December 4, 1987", the failure of the trial court to instruct the jury that they were required to find that Petitioner knowingly had the power and the present intention to control the firearm clearly prejudiced the Petitioner by allowing the jury to find constructive possession on lesser proof than is constitutionally required. In effect, it allowed the jury to find constructive possession on the mere facts of Petitioner's co-ownership of the premises and proximity to the firearm, without finding the key elements of knowledge of the firearm's presence and the present intent to exercise control over the firearm.

As there was insufficient evidence presented to support a finding beyond a reasonable doubt of either of these elements, as discussed more fully under the second question presented for review, the trial court's failure to instruct the jury as to these elements was clearly prejudicial and resulted in a verdict that otherwise would have been different.

Next, the trial court failed to adequately instruct the jury on the probative value of the fact that the firearm in question was legally registered and owned by Petitioner's brother. The trial court properly instructed the jury that ownership was not an element of the charge and thus not part of the government's burden of proof, and then stated that ownership by another person "was not a defense in this case". However, the trial court failed to go on to say that the fact of ownership could be weighed in determining whether Petitioner was in

constructive possession of the weapon. By so emphatically denying the Petitioner the use of the fact of ownership by another in his defense in any manner, the trial court effectively precluded the jury from considering ownership as a relevant factor whatsoever.

Petitioner contends that actual ownership—particularly under the facts of this case—is a factor that must be weighed by the jury in determining a defendant's constructive possession. The trial court must at least acknowledge that such evidence may have probative weight, and such evidence must not be summarily dismissed from the jury's consideration, as was the case here.

In cases where evidence was offered of the true ownership of the weapon, that factor was properly weighed in determining the defendant's constructive possession. See *United States v. Wilson*, 620 F. Supp. 104 (D.C. Tenn), *affirmed* 774 F.2d 1164; *United States v. McCoy*, 781 F.2d 168 (10th Cir. 1985); *United States v. Tribunella*, 749 F.2d 104 (1984). Indeed, in *Tribunella*, *supra*, the fact that the Defendant owned guns was a significant factor in establishing his constructive possession.

Had the facts in this case been slightly different—if it had been the Petitioner who was the registered owner of the gun—the government would certainly have presented this as strong circumstantial evidence of Petitioner's constructive possession, and the trial court's instructions would undoubtedly have included an appropriate comment about the probative value of such fact. It is fundamentally unfair and prejudicial to preclude the jury from weighing uncontroverted evidence of the actual ownership of a gun when that evidence can create reasonable doubt as to a defendant's constructive possession.

The fact that Petitioner's brother, who was a co-owner of the store and who worked there almost daily, was the legal owner of the firearm, if properly weighed along with other facts—such as the fact that Petitioner worked there only one day per week, that he was busy helping a customer at the time of his arrest, and that there was no direct evidence of either Petitioner's knowledge of the presence of the firearm or of any intent to exercise control over it—would have established the reasonable doubt that would have resulted in acquittal on this charge.

Finally, the trial court's failure to instruct the jury on the elements of the knowledge and intent necessary for constructive possession, and its preclusion of consideration by the jury of the factor of actual ownership, effectively limited the jury to finding *actual* possession in order to find Petitioner guilty of the charge. There was no evidence produced of actual possession of the firearm by the Petitioner on or about December 4, 1987, as charged in the indictment, nor did the government even attempt to argue that there was.

Had the court properly instructed the jury that, in order to find actual possession, they needed to find that Petitioner was in knowing, physical control of the weapon *on or about December 4, 1987*, the verdict would clearly have been Not Guilty on this charge. However, the court's instruction that it was sufficient for a finding of guilt if the Petitioner possessed the firearm for "any length of time"—without clearly limiting the time period to the date specified in the indictment—allowed the jury to convict Petitioner based upon testimony that, at some unspecified time—possibly several years—in the past, he was observed handling an unidentified gun. The time of



this occurrence was never established, nor was the gun that was allegedly handled in the past established to be the firearm found on December 4, 1987.

Obviously, Petitioner could not have been found guilty of violating 21 U.S.C. 922(g) if he had possessed a firearm in commerce before he was under disability by virtue of a felony conviction. Even assuming *arguendo*, that it had been conclusively established that he had handled a gun while under disability at some time in the past, this fact would not sufficiently establish, nor does it even allow a reasonable inference, that he was in actual possession of the firearm found on the specific date alleged in the indictment. Yet, the trial court's open-ended charge on this issue left the jury free to improperly draw this very conclusion.

Therefore, Petitioner prays that this Court may accept his Petition for Writ of Certiorari in order to find plain error and to rectify a manifest injustice.

#### **Second Question Presented:**

The petition for writ of certiorari should be granted so that the Court can clarify what constitutes sufficient evidence that a defendant "knowingly has the power and intent to control" for finding constructive possession of a firearm under 21 U.S.C. 922(G), and thereby correct a violation of Petitioner's constitutional right to due process under the Fifth Amendment.

Under the Fifth Amendment, procedural due process is required before the government can take a person's liberty. One of the procedural safeguards against arbitrary deprivation of liberty is the requirement that each and every element of a crime be proven beyond a reasonable doubt. As the Supreme Court held in *Rose v.*

*Clark*, 478 U.S. 570 (1986), proof beyond a reasonable doubt of each and every element of a crime is a constitutionally mandated requirement.

At the close of the evidence at trial, Defendant's counsel made a Motion for Acquittal pursuant to Fed. R. Crim. P. 29, which was denied. The applicable standard of review for a motion for acquittal requires the court to view the evidence in the light most favorable to the government. See *Glasser v. United States*, 315 U.S. 60, 62 S. Ct. 457, 86 L. Ed. 680 (1942); *United States v. Gibson*, 675 F.2d 825, 829 (6th Cir.), cert. denied, 459 U.S. 972, 103 S. Ct. 305, 74 L. Ed. 2d 285 (1982). Under this standard, the court will determine whether the government proved each and every element of the crime beyond a reasonable doubt. See *United States v. Barrera*, 547 F.2d 1250, 1255 (5th Cir. 1977). If a reasonable jury would doubt whether the evidence proves an essential element, the court will reverse. *Id.* See also *United States v. Onick*, 889 F.2d 1425 at 1428 (5th Cir. 1989).

In view of the current anti-drug campaign in the United States and the heightened emotions involved, this is an appropriate time to stop and closely examine adherence to and compliance with the procedural safeguards guaranteed by the Constitution for all individuals.

At trial, no evidence of actual possession was submitted, and the government did not even attempt to argue that there was actual possession. Petitioner did not have the gun on his person when he was arrested, and in fact, was busy helping a female customer with her groceries at the time of arrest. Therefore, the only possible theory upon which Petitioner could have been convicted was constructive possession.

Under a constructive possession theory, the government was required to prove that Petitioner knowingly had the power and the intent at a given time to control the firearm. See *United States v. Beverly*, 750 F.2d 34 (6th Cir. 1984), citing *United States v. Virciglio*, 441 F.2d 1295 (5th Cir. 1971) and *United States v. Burch*, 313 F.2d 628 (6th Cir. 1963).

In the present case, evidence produced at trial established that there were three co-owners of the grocery store—Joe Saleh, Tony Saleh, and Robert Damon. The evidence further established that Tony Saleh worked at the store during the week, and that the gun was legally owned by and registered to Tony Saleh. After the Petitioner's arrest, government agents found Tony's gun beneath the cash register counter.

The evidence indicated that Petitioner worked at the store on Fridays, and that at the time of arrest, he was behind the counter engaged in the legitimate business of selling groceries to a female patron. The arresting officer testified that at the time of Petitioner's arrest, Petitioner did nothing to indicate that he intended to control the gun in any way or that he knew of the gun's presence at that time. Petitioner's fingerprints were not found on the gun.

Again, there was no testimony that Petitioner actually possessed the gun that day. Additionally, given that the store was in a rough neighborhood, it was reasonable as well as legal for Tony Saleh to keep a firearm, so long as the gun was legally owned and registered.

There was testimony that on several occasions sometime in the past few years, Joe Saleh had dusted and handled an unidentified gun. However, Petitioner

was not a felon, and thus forbidden to handle a gun, until approximately one and a half years before his arrest on December 4, 1987. Thus, on the several occasions in the past when Joe had allegedly handled an unidentified gun, there is no clear indication that he was a felon at such time. In any event, such testimony does not indicate that Petitioner had controlled or intended to control a gun on the date charged.

No direct evidence shows that Petitioner knew of the presence of the gun, nor was there any evidence of his intent to control it. Thus, the conviction was based entirely upon circumstantial evidence and inferences therefrom.

The Sixth Circuit established its test for sufficiency of circumstantial evidence in *United States v. Leon*, 534 F.2d 667 (6th Cir. 1976) in which the court states:

Where the evidence as to an element of a crime is equally consistent with a theory of innocence as with a theory of guilt, that evidence necessarily fails to establish guilt beyond a reasonable doubt.

The facts conclusively proven facts at trial were that the Petitioner was a co-owner with two other people of the grocery store, that one of the co-owners lawfully owned the gun, and that Petitioner was lawfully engaged in conducting his grocery business at the counter in proximity to his brother's gun at the time of his arrest.

"Mere proximity" and "co-residence" are factors which have repeatedly been held to be an insufficient basis upon which to convict for constructive possession. *United States v. Reese*, 775 F.2d 1066 (9th Cir. 1985); *United States v. Wilson*, 620 F. Supp. 104 (D.C. Tenn. 1985); *United States v. Beverly*, 750 F.2d 34 (6th Cir. 1984).

More is required, namely that the government produce sufficient evidence of Petitioner's knowledge and intent to control the gun. Yet the testimony of the government's own witness, the arresting officer, established that at no time did Petitioner evidence any attempt or other conduct indicating intent to exercise control over the gun, or even to indicate that he had knowledge of the presence of the gun.

Therefore, Petitioner respectfully prays to this Court to accept his Petition for Writ of Certiorari in order to examine the sufficiency of evidence required to establish constructive possession under 21 U.S.C. 922(g) and rectify the manifest injustice suffered by Petitioner in this case.

#### **Third Question Presented:**

At the close of the government's case, Petitioner made a Motion for Acquittal for Count 18, pursuant to Rule 29(a) of the Federal Rules of Criminal Procedure. The trial court should have granted this motion under the applicable standard of review already discussed. On appeal, Petitioner's First Assignment of Error in the Sixth Circuit specifically addressed this issue and discussed the fact that the government offered no direct evidence which sufficiently connected Petitioner with the attempted sale of drugs on December 4, 1987.

At trial, the government agent had testified that Petitioner said in a phone call on November 19, 1987, that he was concerned about his brother's safety and that his brother would have "security" with him at a meeting scheduled for November 20, 1987. There was no testimony regarding any discussion of narcotics or criminal activity. At the meeting with Petitioner's brother on November 20, 1987, the transaction was abandoned and no deal transpired.

Two weeks later on December 3, 1987, the federal agent arranged with Petitioner's brother for a sale of narcotics. Shortly thereafter, Petitioner's brother and another individual named Joseph Slate, were arrested, and 500 grams of controlled substance were taken from Joseph Slate.

It is important to note that Petitioner's brother had previously told the agent not to come around when Petitioner was there. There was no evidence connecting Petitioner with the December 4, 1987 transaction. Petitioner did not set the meeting, nor was he present. The government attempted to connect the earlier phone discussion regarding the deal on November 20, 1987 which was abandoned, to a transaction conducted by two other persons at later date, without providing any other direct evidence of Petitioner's knowledge or participation. The government agents even testified that there was no direct link to the Petitioner between mid-October and the December 4, 1987 events.

Furthermore, the government witness had also testified that Petitioner's brother often engaged in criminal activity when Petitioner was not present and which Petitioner was not part of. This may certainly indicate that Petitioner was excluded from the transaction in which his brother was involved and from which Petitioner's conviction resulted.

Thus, Appellant contends there is error in the failure of the trial court to recognize the abandonment of the scheme on November 20, 1987, and error in the failure of the trial court to recognize that no aiding and abetting of a later transaction on December 4, 1987 by Petitioner.

The Sixth Circuit has repeatedly held that mere presence and knowledge of an event do not establish knowing participation. *United States v. Williams*, 503 F.2d 50 (6th Cir. 1974). The traditional view on aiding and abetting requires that "the defendant in some sort



of manner associate himself with the venture, that he participate in it as something that he wishes to bring about, that he seek by his action to make it succeed". *NYE & Nissan v. United States*, 336 U.S. 613, 69 S. Ct. 766 (1949). Under the test proposed in *NYE*, Appellant herein was not an aider and abettor and did not attempt to sell drugs on December 4, 1987 because: (1) there was no action; (2) there was no evidence that he knew of the arrangements for December 4, 1987; and (3) he did not participate and thus did not attempt.

Regarding the November events, the evidence shows the agents calling twice to leave messages for Petitioner's brother. It is submitted that such messages are self-serving to the prosecutor and do not show or reflect criminal intent by the defendant. Petitioner had answered the telephone at his lawful place of employment. A man who is given a message in this way that does not clearly identify criminal intent should not be subject to criminal prosecution, as this would fail under intent and would amount to entrapment. The Petitioner was not part of the illegal transaction that occurred on December 4, 1987, as the evidence shows it was a separate arrangement between the informant and Petitioner's brother.

The charge of aiding and abetting the December 4, 1987 attempt was also charged in a separate count as part of a conspiracy. However, there must be proof of interlocking conspiracies not just circumstance and inference. *Kotteakos v. United States of America*, 328 U.S. 750 (1946), provides that if a conspirator engages in various conspiracies without the knowledge of the various other conspirators, then each separate conspirator in the various conspiracies is not liable for the acts of those in other conspiracies of whom he has no knowledge.

No evidence shows that Petitioner directly knew of the specific goings on of December 4, 1987 and thus he could not have been a complicitor in those events. Even if it is inferred that Petitioner had some knowledge of the events of December 4, 1987, that knowledge is insufficient to sustain a conviction, because mere knowledge is not itself a crime. *United States of America v. Williams*, 503 F.2d 50 (6th Cir. 1974). The mere existence of a conspiracy of which an individual is a part does not make him an aider and abettor of every act taken by a co-conspirator outside the conspiracy in which the individual is involved. *Kotteakos v. United States*, 328 U.S. 750 (1946).

Even assuming *arguendo* that knowledge had been proven, mere knowledge of an event by Petitioner is not a sufficient basis for conviction. There must be an affirmative act as a part of a scheme which results in a crime, in otherwords proof of participation. *United States v. Morei*, 127 F.2d 827 (6th Cir. 1949). An aider and abettor should have specific intent to do or assist in the contemplated act. *United States v. Jones*, 605 F. Supp. 513 (1984). Pursuant to *Jones*, the prosecutor must prove each and every element of the alleged crime as to an aider and abettor.

Petitioner may arguably have been involved in a conspiracy dealing with an earlier contemplated act, but the November 20, 1987 meeting was abandoned and there is no evidence after the abandonment of further involvement by Petitioner. There was, however, testimony by a government witness that the Petitioner's brother engaged in transactions without the Petitioner's involvement.

Thus, Petitioner respectfully requests that this Court accept his Petition for Writ of Certiorari.



## CONCLUSION

This Court should grant the Petition for Writ of Certiorari in order to rectify the violations of the Petitioner's right to due process. First, the jury instructions impermissably and seriously confused the jury with regard to the essential elements of possession and proof needed to convict under 18 U.S.C. Section 922(g) "Felon in Possession of a Firearm".

Second, the evidence submitted at trial to prove the charge under 18 U.S.C. Section 922(g) was not legally sufficient for a proper conviction. The trial court should have granted the Defendant's Motion for Acquittal.

And third, the trial court should have granted Petitioner's Motion for Acquittal on Count 18, as raised in Petitioner's appeal, since the evidence does not support a finding that Petitioner aided and abetted on December 4, 1987.

Respectfully submitted,

KENT R. MINSHALL, JR.

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*Counsel for Petitioner*



A1

APPENDIX

DECISION OF THE UNITED STATES COURT OF  
APPEALS FOR THE SIXTH CIRCUIT

(Filed January 17, 1990)

[NOT RECOMMENDED FOR  
FULL TEXT PUBLICATION]

No. 89-1375

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

O R D E R

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UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

ODEH JOSEPH SALEH,  
*Defendant-Appellant.*

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BEFORE: NELSON and BOGGS, *Circuit Judges*;  
BERTELSMAN, *District Judge*\*

This cause having come on to be heard upon the record, the briefs and the oral argument of the parties, and upon due consideration thereof,

The court finds that no prejudicial error intervened in the judgment and proceedings in the district court, and it is therefore ORDERED that said judgment be and it hereby is affirmed.

ENTERED BY ORDER OF THE COURT

/s/ LEONARD GREEN, pj

*Clerk*

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\* The Honorable William O. Bertelsman, United States District Judge, Eastern District of Kentucky, sitting by designation.

**JUDGMENT OF THE UNITED STATES  
DISTRICT COURT**

(Filed March 15, 1989)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

JUDGMENT INCLUDING SENTENCE  
UNDER THE SENTENCING REFORM ACT

Case Number 88 80886

Richard Lustig  
Defendant's Attorney

UNITED STATES OF AMERICA

V.

ODEH JOSEPH SALEH  
(Name of Defendant)

**THE DEFENDANT:**

- [ ] pleaded guilty to count(s) \_\_\_\_\_.
- [x] Was found guilty on count(s) 1, 10, 11, 12, 17 and 20  
after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of  
such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Count Number(s)
21:USC:846	Conspiracy to Possess w/intent to Distribute/Distribute Controlled Substances	1
21:USC:843(b)	Unlawful Use of a Telephone	10
21:USC:843(b)	Unlawful Use of a Telephone	11
21:USC:841(a)(1), 18:USC:2	Distribution of Cocaine, Aiding and Abetting	12
21:USC:843(b)	Unlawful Use of a Telephone	17

The defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) \_\_\_\_\_, and is discharged as to such count(s).
- ☐ Count(s) \_\_\_\_\_ (is)(are) dismissed on the motion of the United States.
- ☒ The mandatory special assessment is included in the portion of this Judgment that imposes a fine.
- ☐ It is ordered that the defendant shall pay to the United States a special assessment of \$\_\_\_\_\_, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Defendant's Soc. Sec. Number:  
363-62-2975

Defendant's mailing address:  
7429 Oakman  
Dearborn, Mi. 48126

Defendant's residence address:  
7429 Oakman  
Dearborn, Mi. 48126

March 6, 1989  
Date of imposition of Sentence

/s/ Anna Diggs Taylor  
Signature of Judicial Officer

Anna Diggs Taylor, U.S. District Court Judge  
Name & Title of Judicial Officer

March 15, 1989  
Date

**JUDGMENT OF THE UNITED STATES  
DISTRICT COURT**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

**JUDGMENT INCLUDING SENTENCE  
UNDER THE SENTENCING REFORM ACT**

**Case Number 88 80886**

**Richard Lustig**  
Defendant's Attorney

**UNITED STATES OF AMERICA**

**V.**

**ODEH JOSEPH SALEH**  
(Name of Defendant)

**THE DEFENDANT:**

- ☐ pleaded guilty to count(s) \_\_\_\_\_.
- ☐ Was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of  
such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Count Number(s)
21:USC:841(a)(1)	Possession w/intent to Distribute Cocaine	20

The defendant is sentenced as provided in pages 2  
through \_\_\_\_ of this Judgment. The sentence is imposed  
pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on  
count(s) \_\_\_\_\_, and is discharged as to such  
count(s).

- [ ] Count(s) \_\_\_\_\_ (is)(are) dismissed on the motion of the United States.
- [ ] The mandatory special assessment is included in the portion of this Judgment that imposes a fine.
- [ ] It is ordered that the defendant shall pay to the United States a special assessment of \$\_\_\_\_\_, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Defendant's Soc. Sec. Number:

\_\_\_\_\_

Defendant's mailing address:

\_\_\_\_\_  
\_\_\_\_\_

Defendant's residence address:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date of imposition of Sentence

/s/ Anna Diggs Taylor  
Signature of Judicial Officer

\_\_\_\_\_  
Name & Title of Judicial Officer

\_\_\_\_\_  
Date

Defendant: Odeh Joseph Saleh Judgment—Page \_\_\_\_\_  
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### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 97 months on Count 1; 97 months for each Counts 10, 11, 12, 17 and 20, these sentences to run concurrent with each other but consecutive to the defendants state imposed sentence.

☐ The Court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district,

a.m.

☐ at \_\_\_\_\_ p.m. on \_\_\_\_\_.

☐ as notified by the Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons

☐ before 2 p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☐ as notified by the Probation Office.



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RETURN

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to  
\_\_\_\_\_ at  
\_\_\_\_\_, with a certified copy of  
this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: Odeh Joseph Saleh

Case Number: 88 80886

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years on Count 1.

While on supervised release, the defendant shall not commit another Federal, state, or local crime and shall comply with the standard conditions that have been adopted by this court (set forth on the following page). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

[ ] The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.

The defendant's supervised release should be under the additional following conditions:

1. That the defendant not commit any crimes, federal, state or local.
2. That the defendant abide by the standard conditions of supervised release recommended by the Sentencing Commission.
3. That the defendant be prohibited from possessing a firearm or other dangerous weapon.

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4. That the defendant is prohibited from incurring new credit charges or opening additional lines of credit without approval of the probation officer.
5. That the defendant is required to provide the probation officer access to any requested financial information.